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SENATE BILL 649

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Cisco McSorley

AN ACT

RELATING TO CORRECTIONS; PROVIDING FOR DISCLOSURE OF
INFORMATION PERTAINING TO CERTAIN INMATES INCARCERATED IN A
PRIVATELY OPERATED CORRECTIONS FACILITY; REQUIRING THE
DEVELOPMENT OF A WRITTEN EMERGENCY RESPONSE PLAN FOR A
PRIVATELY OPERATED CORRECTIONS FACILITY; REQUIRING PROSPECTIVE
CORRECTIONAL OFFICERS AT A PRIVATELY OPERATED CORRECTIONS
FACILITY TO PARTICIPATE IN THE SAME TRAINING PROGRAM REQUIRED
FOR STATE CORRECTIONAL OFFICERS; REQUIRING NOTICE WHEN CERTAIN
INCIDENTS OCCUR AT A PRIVATELY OPERATED CORRECTIONS FACILITY;
AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 33-1-17 NMSA 1978 (being Laws 1985,
Chapter 149, Section 1, as amended) is amended to read:

"33-1-17. PRIVATE CONTRACT. --

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1 A. The corrections department may contract for the
2 operation of any adult female facility or for housing adult
3 female inmates in a private facility with a person or entity
4 in the business of providing correctional or jail services to
5 government entities.

6 B. The corrections department may contract with a
7 person or entity in the business of providing correctional or
8 jail services to government entities for:

9 (1) a correctional facility in Guadalupe
10 county of not less than five hundred fifty and not more than
11 two thousand two hundred beds;

12 (2) a correctional facility in Lea, Chaves or
13 Santa Fe county of not less than one thousand two hundred and
14 not more than two thousand two hundred beds;

15 (3) design and construction of a support
16 services building, a laundry and an infirmary at the
17 penitentiary of New Mexico in Santa Fe; or

18 (4) construction of a public facility to
19 house a special incarceration alternative program for adult
20 male and adult female felony offenders.

21 C. The authorization in Subsection B of this
22 section for a correctional facility in Guadalupe county and a
23 correctional facility in Lea, Chaves or Santa Fe county is
24 contingent upon construction of both facilities, so that one
25 of the facilities shall not be constructed unless both of the

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1 facilities are constructed, as nearly as practicable,
2 simultaneously.

3 D. The corrections department shall solicit
4 proposals and award any contract under this section in
5 accordance with the provisions of the Procurement Code. The
6 contract shall include such terms and conditions as the
7 corrections department may require after consultation with the
8 general services department; provided that the terms and
9 conditions shall include provisions:

10 (1) setting forth comprehensive standards for
11 conditions of incarceration;

12 (2) that the contractor assumes all liability
13 caused by or arising out of all aspects of the provision or
14 operation of the facility;

15 (3) for liability insurance or other proof of
16 financial responsibility acceptable to the general services
17 department covering the contractor and its officers, employees
18 and agents in an amount sufficient to cover all liability
19 caused by or arising out of all aspects of the provision or
20 operation of the facility;

21 (4) that the contractor shall provide the
22 secretary of corrections, the secretary of public safety, the
23 county sheriff for the county in which the corrections
24 facility is located and the governing bodies for the
25 municipality and county in which the corrections facility is

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1 located with the following information regarding an out-of-
2 state inmate, including a federal inmate, who is incarcerated
3 in the facility:

4 (a) the state or territory of the
5 United States or the country in which the inmate was
6 convicted;

7 (b) the criminal offense for which the
8 inmate was convicted; and

9 (c) the classification level for the
10 inmate;

11 (5) that the contractor, subject to
12 consultation with and final approval by the secretary of
13 corrections, shall prepare a written emergency response plan
14 for the corrections facility. The contractor shall provide
15 copies of the emergency response plan to the secretary of
16 corrections, the secretary of public safety, the county
17 sheriff for the county in which the corrections facility is
18 located and the governing bodies for the municipality and
19 county in which the corrections facility is located;

20 (6) that the contractor, as a condition of
21 employment, shall require all his prospective correctional
22 officers to successfully complete the same training program
23 that is required of correctional officers who are employed at
24 state-operated corrections facilities. The contractor shall
25 reimburse the state for the expense of having his prospective

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1 correctional officers participate in the training program;
2 (7) that the warden of the corrections
3 facility shall immediately notify the secretary of
4 corrections, the secretary of public safety and the county
5 sheriff for the county in which the facility is located when
6 an inmate escapes from the facility, when a hostage situation
7 occurs at the facility, when a firearm is discharged at the
8 facility or when a disturbance involving three or more inmates
9 occurs at the facility;

10 [~~(4)~~] (8) for termination for cause upon
11 ninety days' notice to the contractor for failure to meet
12 contract provisions when such failure seriously affects the
13 availability or operation of the facility;

14 [~~(5)~~] (9) that venue for the enforcement of
15 the contract shall be in the district court for Santa Fe
16 county;

17 [~~(6)~~] (10) that continuation of the contract
18 is subject to the availability of funds; and

19 [~~(7)~~] (11) that compliance with the contract
20 shall be monitored by the corrections department and the
21 contract may be terminated for noncompliance.

22 E. When the contractor begins operation of a
23 facility for which private contractor operation is authorized,
24 his employees performing the functions of correctional
25 officers shall be deemed correctional officers for the

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1 purposes of Sections 33-1-10 and 33-1-11 NMSA 1978 but for no
2 other purpose of state law, unless specifically stated.

3 F. Any contract awarded pursuant to this section
4 may include terms to provide for the renovation of the
5 facility or for the construction of new buildings. Work
6 performed pursuant to such terms and conditions shall not be
7 considered a capital project as defined in Section 15-3-23.3
8 NMSA 1978 or a state public works project as defined in
9 Section 13-1-91 NMSA 1978 nor shall it be subject to the
10 requirements of Section 13-1-150 NMSA 1978 or of the Capital
11 Program Act, review by the staff architect of the property
12 control division of the general services department pursuant
13 to Section 15-3-20 NMSA 1978 or regulation by the director of
14 that division pursuant to Section 15-3-11 NMSA 1978.

15 G. Any contract entered into by the corrections
16 department with a private contractor to operate an existing
17 facility shall include a provision securing the right of all
18 persons employed by that facility prior to the effective date
19 of that contract to be employed by that contractor in any
20 position for which they qualify before that position is
21 offered to any person not employed by that facility prior to
22 that date. "

23 Section 2. A new section of Chapter 33, Article 1 NMSA
24 1978 is enacted to read:

25 "[NEW MATERIAL] PRIVATELY OPERATED CORRECTIONS FACILITY--

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1 NO CONTRACT BETWEEN THE CORRECTIONS DEPARTMENT AND OWNER OF
2 THE FACILITY-- REQUIREMENTS. --When a corrections facility in
3 this state is privately operated, but the corrections
4 department does not have a contract with the owner of the
5 facility for the incarceration of state inmates, the warden of
6 the facility shall:

7 A. provide the secretary of corrections, the
8 secretary of public safety, the county sheriff for the county
9 in which the corrections facility is located and the governing
10 bodies for the municipality and county in which the
11 corrections facility is located with the following information
12 regarding an out-of-state inmate, including a federal inmate,
13 who is incarcerated in the facility:

14 (1) the state or territory of the United
15 States or the country in which the inmate was convicted;

16 (2) the criminal offense for which the inmate
17 was convicted; and

18 (3) the classification level for the inmate;

19 B. subject to consultation with and final approval
20 by the secretary of corrections, prepare a written emergency
21 response plan for the corrections facility. The warden shall
22 provide copies of the emergency response plan to the secretary
23 of corrections, the secretary of public safety, the county
24 sheriff for the county in which the corrections facility is
25 located and the governing bodies for the municipality and

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1 county in which the corrections facility is located;

2 C. as a condition of employment, require all his
3 prospective correctional officers to successfully complete the
4 same training program that is required of correctional
5 officers who are employed at state-operated corrections
6 facilities. The warden shall reimburse the state for the
7 expense of having his prospective correctional officers
8 participate in the training program; and

9 D. immediately notify the secretary of
10 corrections, the secretary of public safety and the county
11 sheriff for the county in which the corrections facility is
12 located when an inmate escapes from the facility, when a
13 hostage situation occurs at the facility, when a firearm is
14 discharged at the facility or when a disturbance involving
15 three or more inmates occurs at the facility. "

16 Section 3. EFFECTIVE DATE. --The effective date of the
17 provisions of this act is July 1, 1999.